

1
2
3
4
5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**
7

8 MICHAEL DWAYNE BYARS,

9 Petitioner,

3:15-cv-00388-RCJ-VPC

10 vs.

ORDER

11 BRYAN WILLIAMS, SR., *et al.*,

12 Respondents.
13 _____/

14
15 This action is a *pro se* petition for writ of habeas corpus by Nevada prisoner Michael Dwayne
16 Byars. Byars submitted his habeas petition on July 27, 2015 (ECF No. 8), and it was filed on
17 September 17, 2015, after he paid the filing fee (ECF Nos. 6, 7).

18 On September 28, 2015, Byars filed a document entitled “Request for Stay and Abeyance
19 [and] Withdrawal of Petition” (ECF No. 9). In that filing, Byars states that his habeas petition,
20 initiating this case, was filed prematurely, and that he “wishes to withdraw his petition,” so that he
21 may return to state court to initially present his claims there. On October 9, 2015, respondents filed a
22 response to Byars’ September 28 motion (ECF No. 11). In their response, respondents note that the
23 title of Byars’ motion created some ambiguity with respect to Byars’ intention, and respondents
24 indicate that they oppose a stay of this action.

25 Byars’ then filed a further motion, entitled “Motion to Withdraw Petition” (ECF No. 12). In
26 that motion he clarifies the purpose of his previous motion, and he clearly requests, without any

1 ambiguity, that the court “allow him to withdraw his petition without prejudice.” Motion to
2 Withdraw Petition, p. 2. Respondents did not respond to the second motion.

3 The court has examined Byars’ petition, and finds that it does appear to be premature. The
4 petition, and documents attached to it, indicate that Byars’ was convicted on September 9, 2012, of
5 being a felon in possession of a firearm. Byars pursued a direct appeal to the Nevada Supreme Court,
6 and, on October 16, 2014, that court affirmed his conviction for being a felon in possession of a
7 firearm. Byars’ habeas petition indicates that, when it was submitted to this court, Byars had not yet
8 initiated a state post-conviction proceeding.

9 Under the circumstances, the court finds that there is good cause for Byars to voluntarily
10 dismiss this action, so that he may further exhaust claims in state court before proceeding with a
11 federal habeas corpus action. The court will treat petitioner’s motions as requests to voluntarily
12 dismiss this action without prejudice, and will grant those motions.

13 **IT IS THEREFORE ORDERED** that petitioner’s “Request for Stay and Abeyance [and]
14 Withdrawal of Petition” (ECF No. 9) is **GRANTED**.

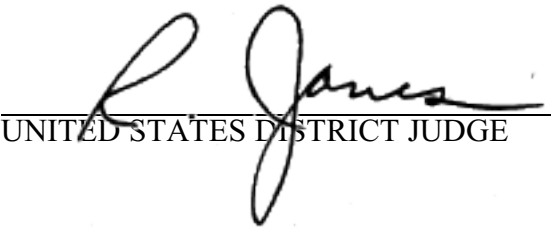
15 **IT IS FURTHER ORDERED** that “Motion to Withdraw Petition” (ECF No. 12) is
16 **GRANTED**.

17 **IT IS FURTHER ORDERED** that respondents’ Motion for Enlargement of Time
18 (ECF No. 14) is **DENIED**, as it is now moot.

19 **IT IS FURTHER ORDERED** that this action is dismissed without prejudice.

20 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment accordingly.

21 DATED: This 2nd day of December, 2015.

22
23
24 
25 UNITED STATES DISTRICT JUDGE
26